

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
GREENVILLE DIVISION**

Kelvin Toyo Henry, *a/k/a Kevin Toyo Banks*,

Plaintiff,
v.

Law Enforcement Agency, The State of South Carolina, Magistrate Judges, Clerk, and Sheriff of Greenville Police Dpt.,

Defendants.

Case No. 6:23-cv-2319-RMG

ORDER AND OPINION

Before the Court is the Magistrate Judge's Report and Recommendation (R & R) to deny Plaintiff's motion to proceed in forma pauperis (Dkt. No. 9). (Dkt. No. 11). Plaintiff did not file an objection to the R & R. For the reasons set forth below, the Court ADOPTS the R & R as the order of the Court and denies Plaintiff's motion to proceed in forma pauperis.

I. Legal Standard

The Magistrate Judge makes only a recommendation to this Court that has no presumptive weight, and the responsibility to make a final determination remains with the Court. *Mathews v. Weber*, 423 U.S. 261, 270-71 (1976). The Court may “accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1)(C). Where there are specific objections to the R & R, the Court “makes a *de novo* determination of those portions of the report or specified proposed findings or recommendations to which objection is made.” *Id.* Where there are no objections to the R & R, the Court reviews the R & R to “only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.” FED. R. CIV. P. 72 advisory committee's note; *see also Camby v. Davis*, 718

F.2d 198, 199 (4th Cir. 1983) (“In the absence of objection ... we do not believe that it requires any explanation.”).

II. Discussion

Plaintiff is a pretrial detainee currently incarcerated at the Greenville County Detention Center. On May 30, 2023, Plaintiff filed a complaint alleging, inter alia, that Defendants engaged in a civil conspiracy, tampered with evidence, wrongly imprisoned him, and denied him due process. (Dkt. No. 1-3 at 4). On June 15, 2023, Plaintiff moved to proceed in forma pauperis. (Dkt. No. 9). On June 20, 2023, the Magistrate Judge recommended denying Plaintiff’s motion to proceed in forma pauperis under 28 U.S.C. § 1915(g).

“When a prisoner has previously filed at least three actions or appeals that were dismissed on the grounds that they were frivolous, malicious, or failed to state a claim upon which relief may be granted,” the Prison Litigation Reform Act’s (“PLRA”) “three strikes” provision requires that the prisoner demonstrate imminent danger of serious physical injury in order to proceed without prepayment of fees.” *McLean v. United States*, 566 F.3d 391, 393-94 (4th Cir. 2009) (quoting 28 U.S.C. § 1915(g)).

The Magistrate Judge found that Plaintiff has filed approximately six cases in this Court in the past year, at least three of which comprise Plaintiff’s ‘three strikes’ under the PLRA. *See Henry v. Warden of the Greenville Cnty. Det. Cent.*, No. 6:22-cv-03278- RMG, Docs. 20; 27 (D.S.C. Jan. 6, 2023); *Henry v. Warden of the Greenville Cnty. Det. Cent.*, No. 8:22-cv-04380- RMG, Docs. 14; 20 (D.S.C. Mar. 16, 2023); *Henry v. Chief of Police Dep’t*, No. 6:23-cv-01624- RMG, Docs. 16; 20 (D.S.C. Jun. 9, 2023). As a result, Plaintiff may proceed in forma pauperis only upon a showing of imminent physical harm, which requires “specific fact allegations of ongoing serious injury, or of a pattern of misconduct evidencing the likelihood of imminent serious physical injury.” *Johnson v. Warner*, 200 F. App’x 270, 272 (4th Cir. 2006). As the Magistrate

Judge correctly determined, Plaintiff has made no such showing here. Therefore, the three-strikes rule bars Plaintiff from proceeding in forma pauperis.

III. Conclusion

Based on the reasons set forth above, the Court ADOPTS the R & R as the order of the Court. (Dkt. No. 11). The Court orders Plaintiff to pay the filing fee within twenty-one days of this Order. If Plaintiff fails to pay the filing fee after twenty-one days, the Court orders the Clerk of Court to dismiss this action and enter final judgment.

AND IT IS SO ORDERED.

s/ Richard M. Gergel
Richard M. Gergel
United States District Judge

July 18, 2023
Charleston, South Carolina